

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4174-05
Bill No.: SCS for HCS for HB 1305 with SA 1, SA 1 to SA 1, and SA 2 to SA 1
Subject: Insurance - General; Insurance Dept.; Health Care Professionals
Type: Original
Date: April 19, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue	(\$15,000,000)	(\$15,199,972)	(\$15,112,982)
Total Estimated Net Effect on General Revenue Fund	(\$15,000,000)	(\$15,199,972)	(\$15,112,982)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Insurance Dedicated	(\$1,160,781)	(\$332,669)	(\$341,073)
Total Estimated Net Effect on <u>All</u> State Funds	(\$1,160,781)	(\$332,669)	(\$341,073)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services, Department of Public Safety (DPS) - Missouri State Water Patrol, Office of Administration (COA) - Division of Accounting, Missouri Department of Conservation, Missouri Consolidated Health Care Plan, Department of Economic Development - Professional Registration and Office of State Courts Administrator** assume the proposal will have no fiscal impact on their organizations.

Officials from the **DPS - Missouri State Highway Patrol** defer to the Missouri Department of Transportation for response regarding the fiscal impact of this proposal on their organization.

Officials from the **Missouri Department of Transportation** assume the proposal will have no fiscal impact to the MHTC/DOT or the Highway and Patrol Medical Plan.

Officials from the **Department of Health and Senior Services (DOH)** state the proposal would not be expected to fiscally impact the operations of the DOH. If a fiscal impact were to result, funds to support the program would be sought through the appropriations process.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** state this proposal modifies the law regarding medical malpractice insurance. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Insurance could require as many as 25 pages in the *Code of State Regulations*. For any given rule, roughly one-half again as many pages are published in the *Missouri Register* as are published in the Code because cost statements, fiscal notes and notices are not published in the Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual costs could be more or less than the numbers given. The fiscal impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn. The SOS estimates the cost of this legislation to be $\$1,526 [(25 \text{ pp} \times \$27) + (37 \text{ pp} \times \$23)]$.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **COA - Division of Budget and Planning (BAP)** state the proposal should not result in additional costs or savings to the BAP. There will be a reduction in total state revenue (TSR) and general revenue (GR) because of tax credits created by Senate Amendment #1. There is a cap of \$15 million annually on issuance. Redemption (and the impact on TSR & GR) could be greater or less than \$15 million in any given fiscal year.

The amended proposal also uses \$10 million of the tobacco settlement receipts for a loan program. The tobacco settlement money is completely obligated for ongoing programs. Therefore, this will be a cost of \$10 million to GR unless existing programs funded by the tobacco settlement money are reduced or ended.

Oversight notes tax credits for malpractice insurance premiums are capped at \$15 million per fiscal year, but may be carried-forward for a maximum of five years. Therefore, unused credits may affect General Revenue through FY 2013. **Oversight** has, for fiscal note purposes, assumed the maximum \$15 million in tax credits will be issued and used each fiscal year.

Officials from the **Department of Revenue (DOR)** state it is the assumption of the department that the Department of Insurance will be certifying the credit to the taxpayers and to DOR and that the Department of Insurance will maintain a database to ensure the \$15 million cap is not exceeded.

ASSUMPTION (continued)

The Personal Tax Division will need one (1) Tax Processing Tech I for every 4,000 credits claimed for verification and processing. One (1) Tax Processing Tech I will be needed for every 3,000 additional pieces of correspondence generated on this credit. Two (2) Tax Season Temporaries will be needed to key the additional line on the tax return.

The Business Tax Division will need one (1) Tax Processing Tech I for every 3, 600 credits claimed for verification and processing.

The individual and corporate computer systems will need to be modified along with the personal computer applications to allow for the tax credit line on the tax returns. It is estimated that 2,076 hours of programming will be needed to make these modifications. One-time computer programming costs are estimated at \$69,255.

The DOR estimates the total cost of this proposal to be \$214,776 for FY 06 and \$128,186 for FY 07.

Oversight has, for fiscal note purposes only, changed the starting salary for the three (3) Tax Processing Tech Is to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. **Oversight** further assumes additional rental space will not be required for three full-time and two temporary employees.

Officials from the **Department of Insurance (INS)** state additional workload requirements for examining activities, operations, market conduct, and financial condition of company will be conducted with existing staff. Medical malpractice insurers will be required to refile policy forms to comply with the cancellation provisions. Policy forms must be submitted to the INS for review along with a \$50 filing fee. There are 41 insurers that write medical malpractice insurance. The INS estimates one-time revenues of \$2,050 deposited into the Insurance Dedicated Fund (41 x \$50 = \$2,050).

Senate Amendment #1

Section 135.163 - The tax credit provision would require additional staffing and database development to administer this credit. For the INS, this would involve processing tax credit certifications for roughly 37,000 health care professionals in the State. There would be both data entry and analysis involved in this process. It would require a new database system to compile the data and issue certifications. The INS would require an **Accountant I** to analyze and certify

ASSUMPTION (continued)

tax credits. A **clerk typist** would also be required for data entry and clerical support. Development of a tax credit database for this purpose would require approximately 1,960 contract computer-programming hours at a cost of \$186,000.

Section 383.200 requires approval of medical malpractice rates by the Director of the INS. This is an expansion of authority and responsibility for the INS. This provision will result in a need for greater actuarial involvement in the rate review process, as it would specifically require approval or disapproval prior to implementation by the insurer. In addition, it is anticipated that in light of these provisions, hearings would be required to adjudicate appeals by insurers of disapprovals by the INS of proposed rates.

The INS would require an additional **full-time actuary** and **one Research Analyst III** to handle the increase workload for approval of rate filings. They would be responsible for collecting and analyzing market competitiveness, claims data, and other criteria used to establish rates. They would also be responsible for reviewing and approving rates based on the analysis of this data. The INS estimates one time programming costs of \$12,025 would be required to develop and implement the risk reporting database.

Section 383.220 will require the INS to develop an interactive website for health care providers to receive quotes. This will require one Computer Information Tech III to update and maintain system once it is established. **The INS will require \$675,034 in one-time contract computer programming and additional hardware, software, and networking expenses to develop and implement the interactive site.**

Section 383.600-383.665 - Establishes the Missouri Physicians Mutual Insurance Company Act. The INS is to examine the Missouri Physicians Mutual Insurance Company the same as any other insurer. Additional workload requirements for examining activities will be conducted with existing staff.

Officials from the **Office of the Governor, Missouri Senate, and Office of State Treasurer** did not respond to our request for a statement of fiscal impact.

This proposal will result in a decrease in Total State Revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
GENERAL REVENUE			
<u>Costs - Department of Revenue</u>			
Personal Service Costs (3 FTE and 2 Seasonal)	\$0	(\$77,676)	(\$79,227)
Fringe Benefits	\$0	(\$32,158)	(\$32,800)
Equipment and Expense	<u>\$0</u>	<u>(\$90,138)</u>	<u>(\$955)</u>
Total <u>Cost</u> - Department of Revenue	\$0	(\$199,972)	(\$112,982)
<u>Loss - Department of Revenue</u>			
Reduction in Personal Income Tax Receipts	<u>(\$15,000,000)</u>	<u>(\$15,000,000)</u>	<u>(\$15,000,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$15,000,000)</u>	<u>(\$15,199,972)</u>	<u>(\$15,112,982)</u>
INSURANCE DEDICATED FUND			
<u>Income - Department of Insurance</u>			
Form Filing Fees	\$2,050	\$0	\$0
<u>Costs - Department of Insurance</u>			
Personal Service Costs (5 FTE)	(\$181,056)	(\$222,699)	(\$228,266)
Fringe Benefits	(\$74,957)	(\$92,197)	(\$94,502)
Equipment and Expenses	(\$33,759)	(\$17,773)	(\$18,305)
Contract Programming	(\$198,025)	\$0	\$0
Website Programming and Hardware	<u>(\$675,034)</u>	<u>\$0</u>	<u>\$0</u>
Total <u>Costs</u> - Department of Insurance	(\$1,162,831)	(\$332,669)	(\$341,073)
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$1,160,781)</u>	<u>(\$332,669)</u>	<u>(\$341,073)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could have a direct effect on the medical malpractice insurance premiums paid by physicians and small businesses that provide medical malpractice insurance for their employees.

DESCRIPTION

This proposal makes several changes to the laws regarding medical malpractice insurance. The proposal includes medical malpractice insurance policies issued by insurance companies or professional malpractice associations (bedpan mutuals or 383s) within the definition of "commercial casualty insurance" for the purposes of providing notice when canceling or renewing such policies (Sections 379.882 - 379.888, RSMo). Under current law, medical malpractice insurance is not included (section 383.010). By including medical malpractice insurance in the definition of "commercial casualty insurance" in those sections, medical malpractice insurance policies will be subject to certain cancellation and nonrenewal requirements and the rate filing requirements that apply to other forms of commercial casualty insurance.

CONVERTING BEDPAN MUTUALS - Under this proposal, no physician mutual insurance companies (383s or bedpan mutuals) formed under Chapter 383, RSMo, may be converted into an insurance company licensed under Chapter 375, 377, or 379, RSMo, or other business entity. If the member of such an association desire to change the structure of the association and organize under such laws, the physician mutual insurance company must pay all outstanding claims, indemnities and other liabilities. Thereafter, a final dissolution of the association may be performed, and any remaining surplus shall be distributed to the members subject to the approval of the director (Section 383.010.4).

WAIVER OF LAWSUITS PROHIBITED - No physician mutual insurance company shall require, as a condition in any insurance policy, that the insured health care provider waive any right to pursue a cause of action against the managers or directors of the company for mismanagement or other breach of fiduciary duties (Section 383.010.5).

ARTICLES OF ASSOCIATION - The articles of incorporation filed by any association formed under Sections 383.010 to 383.040 shall specify the types of assessments that will be applied to its members. With respect to any assessment to cover losses and expenses of the association, the articles shall specify the exact method and criteria by which the amounts of each type of assessment are to be determined, the time in which such assessments may be made without limitation as to frequency, and the maximum amount of any one such assessment (Section 383.015).

DESCRIPTION (continued)

FINANCIAL AND MARKET CONDUCT EXAMINATIONS - This proposal modifies the section which subjects mutual insurance companies formed under Sections 383.010 to 383.040 to market conduct and financial examinations by the Department of Insurance (Section 383.030).

PROFESSIONAL MALPRACTICE ASSOCIATIONS TO BE SUBJECT TO CERTAIN INSURANCE LAWS - This proposal subjects certain professional malpractice associations (383s) to Sections 379.882 - 379.893 regarding commercial casualty insurance, Section 379.321.6 dealing with rate filing and notice requirements of commercial casualty insurance, and Sections 375.930 - 375.948 dealing with unfair trade practices. The proposal also modifies the law of how Section 379.080 (relating to permissible investments) and Section 379.102 (relating to maintenance of unearned premium and loss reserves as liabilities) apply to professional malpractice associations (Section 383.035).

SOLVENCY OF PROFESSIONAL MALPRACTICE ASSOCIATIONS - This proposal requires the Director of the Department of Insurance to order associations formed under Sections 383.010 to 383.040 to submit a voluntary plan under which the association will restore its surplus to at least zero dollars. The Director of the Department of Insurance shall monitor the performance of the association's plan and order assessments upon its members if these surplus requirements are not met. Under the current law, this function is discretionary. The act provides that it is an unfair trade practice for an association to assert, contrary to its articles and bylaws, to its members that assessments shall not be made.

STOCK INSURANCE COMPANIES - This proposal allows medical malpractice insurance stock insurance companies to form under certain conditions. The general incorporation provisions of Chapter 379, RSMo, and insurance laws of this state shall be applicable unless the provisions of the act provide otherwise. No company authorized to issue medical malpractice insurance prior to August 28, 2004, shall incorporate under the provisions of this act. Under this proposal, the director of the Department of Insurance may waive the capital and surplus requirements solely for medical malpractice for any company formed under the provisions of this act. The proposal also provides that any company formed under this act shall not be a member of the Missouri Property and Casualty Insurance Guarantee Association, unless the company meets the applicable capital and surplus requirements and maintains such capital and surplus requirements for a period of not less than three consecutive years. Physician mutual insurance companies formed under Chapter 383, RSMo, may be merged into any company formed under this proposal.

PENALTY FOR FAILING TO FILE TIMELY CLAIMS INFORMATION - This proposal assesses a fine against medical malpractice insurers and self-insured health care providers that fail to file timely report claims information (Section 383.112).

DESCRIPTION (continued)

COMPETITIVE BIDDING PROCESS - This proposal allows the Director of the Department of Insurance to establish a competitive bidding process after the director determines that medical malpractice insurance is not reasonably available in the voluntary market (Sections 383.150 and 383.151).

TAX CREDIT FOR MEDICAL MALPRACTICE PREMIUMS FOR HEALTH CARE PROVIDERS - This proposal creates a tax credit for health care providers to offset medical malpractice insurance premiums. The tax credit is in an amount of up to 15% of an annual increase in the provider's medical malpractice insurance premium. The tax credit is capped at \$15 million (Section 135.163).

INSURANCE OVERSIGHT AND RATE REDUCTION PROGRAM - This proposal establishes new standards and procedures for making and using rates for medical malpractice insurance. First, the proposal exempts medical malpractice insurance from the rate regulations that apply to other forms of property and casualty insurance (Section 379.316). The proposal provides that such rates shall not be excessive, inadequate or unfairly discriminatory. Any insurer that desires to increase a rate by less than 15% shall file the rate, along with supporting data, no later than 30 days after such rate becomes effective. These filings shall not be subject to approval or disapproval by the director.

Any insurer desiring to increase a rate 15% or higher shall submit a complete rate application to the director. The applicant has the burden of proving that the requested rate increase is justified.

The proposal provides that every insurer that has filed a rate increase not requiring approval by the director for 2 consecutive years and in the 3rd desires a rate increase in which the aggregate over the three-year period will exceed a total 40% rate increase will have to prove that the rate is justified.

The director has authority to promulgate rules which will set forth standards that insurers will use to calculate their rates. The rules shall establish a range within which an expected rate or return shall be presumed reasonable, establish categories of expenses that shall be presumed reasonable, establish proper weights to be given to different years of experience and any other standard deemed reasonable and appropriate by the director.

The director shall require insurers to submit in their application for a rate change the following:

(1) A comparison between the insurer's projected incurred losses and its ultimate incurred losses for the eight most recent policy years for which data is available and

DESCRIPTION (continued)

(2) A memorandum explaining its methodology the insurer used to reflect the total investment income it reasonably expects to earn on all its assets during the period the proposed rate is to be in effect.

The director shall notify the public of any application for a rate increase of 15% or more, and shall hold a hearing on the application within 45 days. The application shall be deemed approved 90 days after such hearing unless disapproved by the director after the hearing.

This proposal gives the director the authority to order an insurer to discontinue using an excessive rate and that the insurer refund the excessive portion of the rate to any policyholder who has paid such rate. The director shall not be required to find that a reasonable degree of competition does not exist to find a rate excessive.

The director may consider out-of-state experiences if their insufficient experience in this state. In some circumstances, the director may consider nationwide experience (Section 383.200).

COMPRESSION OF RATES - This proposal provides that the ratio between the base rate of the highest-rated specialty and the base rate of the lowest-rated specialty shall be no more than a ratio of six-to-one (Section 383.205).

EXPERIENCE RATING - This proposal requires medical malpractice insurers to apply a credit or debit on the provider's loss experience. The insurer shall include a schedule of all such credits and debits, or a description of such alternative method in all filings it makes with the director of insurance (Section 383.210).

DATA DISCLOSURE - This proposal requires each malpractice insurer, on or before March 1st of every year to file certain information with the department of insurance. The information shall consist of or relate to, but not be limited to: closed claims; judgments, payment, and severity of injury in connection with judgments; rate changes during the previous five-year period; premiums and losses by medical specialty; premiums and losses by experience of insured; and investment performance of the insurer (Section 383.215).

MEDICAL MALPRACTICE INSURANCE QUOTATION SERVICE - This proposal requires the department by July 1, 2005, to develop and establish an interactive Internet web site enabling health care providers to obtain medical malpractice insurance quotes. Insurers' rate changes must be integrated into the website within 10 days. The site must provide contact information for each of the insurers participating. By December 1, 2005, the director of the department must submit a report to the General Assembly on the development, implementation, and effectiveness of the website (Section 383.220).

DESCRIPTION (continued)

FILING OF MANUALS AND CLASSIFICATIONS - This proposal requires insurers to file new manuals of classifications, rules, underwriting rules, rates, rate plans and modifications, policy forms and other forms to which such rates are applied, that reflect the savings, if any, attributable to each provision in the proposal (Section 383.225).

NOTICE OF RENEWAL PREMIUM RATE INCREASE - This proposal requires insurers to provide at least 90 days written notice to insureds of renewal premium rate increases (Section 383.230).

MISSOURI PHYSICIANS MUTUAL INSURANCE COMPANY - This proposal establishes the Missouri Physicians Mutual Insurance Company, a public corporation which will provide medical malpractice insurance for its members. A nine-member board of directors, appointed by the Governor, will oversee the company; and an administrator, hired by the board, will manage the company. Employees of the company will be immune from personal liability for acts performed, or obligations entered into, when done in good faith. The board will have control over the company's premium rates. Any insurance producer licensed to sell professional negligence insurance in the state may sell policies for the company. The administrator will formulate and implement a program to reduce the amount of medical malpractice by providing training seminars to physicians and their staffs. The board may deny insurance to physicians who refuse to attend the training seminars. The company will bear the cost of the training. The company may be capitalized by a loan of up to \$10 million from the state's Physicians Mutual Insurance Company Loan Fund, which is created in the bill. Revenue bonds may also be issued in an amount not to exceed a principal amount of \$50 million (Sections 383.605 - 383.655).

INSURANCE REQUIREMENTS FOR HMO'S - The proposal provides that health services corporations, HMO's and health benefit plan entities cannot require, as a condition of participation in the network, that a physician maintain a medical malpractice insurance policy that is deemed excessive by the director of the Department of Insurance (Section 354.001).

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SOURCES OF INFORMATION

Office of Attorney General

Office of Administration -

Division of Accounting

Division of Budget and Planning

Office of State Courts Administrator

Department of Economic Development -

Division of Professional Registration

Department of Health and Senior Services

Department of Revenue

Department of Social Services

Missouri Department of Transportation

Department of Public Safety -

Missouri State Highway Patrol

Missouri State Water Patrol

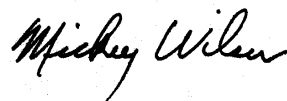
Missouri Consolidated Health Care Plan

Department of Insurance

Missouri Department of Conservation

Office of Secretary of State

NOT RESPONDING: Office of the Governor, Missouri Senate and Office of State Treasurer

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA

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